IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1684 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SECOND ADDL SPL LAND ACQUISION OFFICER - Appellant(s)
Versus
CHANDUBHAI GAGUBHAI DABHI - Defendant(s)

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Appearance :
MR UR BHATT, AGP Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 08/11/2006

ORAL JUDGMENT

The 2nd Additional Special Land Acquisition Officer, Ahmedabad District, being aggrieved by the judgment and award made by the 2nd Extra

Assistant Judge, Ahmedabad [Rural] at Narol, in Land Acquisition Case No. 56 of 1983 has filed this appeal on the ground that the the compensation awarded by the Learned Judge is exorbitant and that too without any basis for the same.

2. The facts of the case, as transpire from the record, are that respondent owned land bearing survey no. 372 admeasuring 0 Hectare, 33 Are and 39 sq. mtrs., situated in village Bagodara of Dholka Taluka. It was Jirayat land. The proceedings under the Land Acquisition Act [for short 'the Act'] were initiated since the land was required for construction of bus stand at Bagodara. Notification under section 4 of the Act was published on 1/10/1981 and the declaration under section 6 was made on 5/8/1982. After complying with all the requirements the award by the appellant was made and he determined the market value of the land at the rate of Rs.120/- per Are. He, therefore, awarded Rs.4007/- for land, Rs.144/- for trees, Rs.10275/- for well; inall Rs.14,426/- plus Rs.2163-90 ps., as solatium. He thereafter deducted by way of contribution to Government a sum of Rs.230-40 ps. The net amount that was awarded to respondent was Rs.16,359-50 ps.

2.1. Since the claimant – respondent was not satisfied with the award of the appellant, he sought reference under section 18 of the Act, which ultimately turned into Land Acquisition Case No. 56 of 1983. Before the learned Judge, it was averred that the market value determined by the appellant

was hopelessly inadequate or on lower side and the demand of Rs.15,000/- per Vigha by way of compensation was made. Before the Reference Court the claimant led evidence by examining himself. On the basis of the material produced before it, the learned Judge arrived at a conclusion that the market value determined by the appellant was inadequate and it was required to be enhanced. The learned Judge ultimately granted the reference and awarded additional sum of Rs.6/- per sq. mtr., together with all the statutory benefits including the interest. The appellant has, therefore, filed this appeal to challenge the same.

3. Mr. Uday Bhatt, Ld. AGP has submitted that the learned Judge has committed grave error in fixing the rate at Rs.7/- per sq. mtr. According to him, the claimant has failed to produce any material to substantiate his claim. He has also submitted that considering the fact that the land was new tenure land, the additional amount of Rs.6/- per sq. mtr., is very high.

4. I have perused the record of the appeal and in particular the evidence of the claimant as well as the judgment of the Reference Court. Evidence of the claimant is recorded at Exh. 10. He has stated in it that he himself cultivated the land. It was new tenure land and of Jirayat nature. He had well on the land. According to him, he obtained crops two times in a year. He raised cotton crop, Juvar crop and in winter wheat crop. He has also stated that

his land is situated at 7 road junction. These roads lead to Dholka, Viramgam, Kheda and other places. He has also stated that in the vicinity of the land construction has been raised and there are Jain temples, restaurants and building of Government cooperative society. There is also a petrol pump situated there. In short, according to him, there was development all around the land. He has further stated that around the time of acquisition, land in this area was sold at Rs.8,000/- per Vigha. In support of his say, he has also produced document at Exh. 14. He has stated that before the Land Acquisition Officer i.e., appellant he had demanded compensation at the rate of Rs.7/- per sq. mtr. In the cross-examination he has stated that the restaurants around that land were there for the last 7 to 8 years. The petrol pump was also installed prior to construction of the bus stand. He has admitted that his land is situated at the distance of about 2 furlong from the village. No further cross-examination is done on behalf of the appellant. In other words, the rest of the evidence of the respondent has gone unchallenged.

4.1. Though the Reference Court has not assigned any reasons for determining the market value at the rate of Rs.7/- per sq. mtr., considering the material on record and in particular, the evidence of respondent, it clearly appears that the land is situated at prime location. Not only that, but there is considerable development in the vicinity. There was, therefore, ample scope for the respondent to develop this land in future. It is true that it was new tenure

land, but then the location and the nature of the land cannot be ignored. The respondent has also produced document at Exh. 14 to substantiate his say that land in that area was sold at Rs.8,000/- per Vigha. When this is the position and when there is no cross-examination whatsoever on this aspect, there is hardly any reason for me to disbelieve the claimant. It is also true that in the judgment of the Reference Court proper reasons for enhancement of the market rate are not reflected, but the evidence clearly shows that the compensation awarded by the appellant was inadequate. May be, that in the facts and circumstances of the case, increase to the extent of Rs.6/- per sq. mtr., could not have been made, but considering the fact that the land was acquired in or around 1982 and the judgment of the Reference Court was delivered in March 1984, in these peculiar circumstances of the case also, it is not desirable to disturb the award made by the Reference Court. The respondent is served but he has not remained present either in person or through advocate, but for the reasons which have been stated above, I do not wish to interfere with the judgment of the Reference Court. Hence, I find no merit in this appeal and it is dismissed with no order as to costs.

[Akshay H Mehta, J.]

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